IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19317 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**
2	To be referred to the Reporter or not ? **-No.**
3	Whether their Lordships wish to see the fair copy of the judgment ? **-No.**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**
5	Whether it is to be circulated to the civil judge ? **-No.**

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HITESHBHAI @ PAPPU RAJNIKNAT JAYSWAL - Petitioner(s)

Versus

STATE OF GUJARAT &2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,

RULE SERVED for Respondent(s) : 1 - 2.

GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 17/11/2005

ORAL JUDGMENT

1.Hiteshbhai @ Pappu Rajnikant Jayswal, petitioner has filed petition of habeas corpus under Article 226 of the Constitution of India praying for quashing and setting aside the order of detention dated 13/9/2005 passed by the detaining authority under the provisions of Section (2) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (herein after referred to as 'the Act'), as being illegal, invalid, arbitrary, void ab initio, suffers from total non application of mind and also in violation of provision of Article 14, 19, 21 and 22 of the Constitution of India. My brother Mr. Justice A.S.Dave, has issued Rule on 23/9/2005 and therefore, matter has been placed for final hearing in this Court.

2.Mr.H.R.Prajapati, learned advocate for the petitioner has invited my attention to the order of detention as well as grounds of detention supplied by the detaining authority dated 13/9/2005. He has stated that in the grounds of detention, the detaining authority has considered the following prohibition cases as under:

C.R. NO.	Police Station	Regi. on (date)	Arrested on	Bail and stage
32/05	Varnama	30/1/2005	15/5/2005	16/5/2005 PT
96/05	Varnama	23/3/2005	15/5/2005	16/5/2005 PT
160/05	Varnama	15/5/2005	15/5/2005	16/5/2005 PT
213/05	Varnama	24/6/2005	17/8/2005	17/8/2005 PT

1.It is also been stated that the authority has recorded two statements of witnesses under Section 9(2) of the Act, which has been verified by the Jilla Magistrate, Vadodara, which is at page 113 to 115 of the petition, as under:

27/8/2005	Before 5 (five) days i.e. 22/8/2005	30/8/2005
07/09/05	Before 5 (five) days i.e. 2/9/2005	07/09/05

2.In the grounds of detention, it has also been alleged that petitioner is a boot-legger, within the meaning of Section 2(b) of the Act, which is very serious matter and if the same is continue, it adversely affect the public order and public health in this behalf.

3.The learned counsel for the petitioner has invited my attention to the following contentions.

5.1 The petitioner respectfully states that it is it is alleged that the petitioner is a boot-legger and his activities are prejudicial to the maintenance of public order. The petitioner respectfully states that in the instant case, the detaining authority has failed to substantiate that the alleged anti-social activities of the petitioner adversely affect the maintenance of public order. It may be that the petitioner is a bootlegger within the meaning of section 2(b) of the Act, but merely because the petitioner is a bootlegger, he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of Section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. The detention order cannot sustained, therefore, the detention order is required to be quashed and set aside.

5.2 The petitioner respectfully states that alleged bootlegging activities themselves is not affecting the maintenance of public order and there is no other material on record to show that due to alleged activity public order is disturbed. Therefore, the detention order is required to be quashed and set aside.

4.The learned counsel for the petitioner has relied upon the judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta v. Commissioner of Police, reported in AIR 1989 SC 491, particularly para 16 and then after relying upon the case of Pushkar v. the State of Bangal, in para 18 on the same page, the learned Judge also relied upon the Division Bench judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.)in the case of Ashokbhai Balabhai Makwana, in L.P.A. No.223 of 2000 dated 22/8/2000.

5.As regards law and order, the learned counsel has relied upon the Division Bench Judgment of this Court (Coram:C.K.Thakkar and K.M.MEHTA, J.J.), reported in 2000 (1) GLR 816 and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005.

6.I have considered the submissions, facts and circumstances of the case of the petitioner in this behalf and after relying upon the judgment in the case of Piyush Kantilal Mehta (Supra), LPA and division bench judgment, the offence alleged against the detenue in the order of detention and also allegation made against the detenue that he is a bootlegger is not correct. The activity of the petitioner is not disturbing the public order but only law and order. Activity of bootlegging in relation to specific person does not led to public disorder. When two people quarrel, it may be said that there is disorder but not public disorder. The petitioner cannot be detained on

the ground that there is disturbance in public order. In this connection, this Court refer judgment reported in AIR SC 1989 497 also.

7.It is submitted that in view of the instance, it is alleged that there is no question of breach of public order. I have relied upon judgment the Division Bench (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in the case of Ashok Balabhai Makwana dated 22/8/2000 and also relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta vs. Commissioner of Police, reported in AIR 1989 SC 491.

8.Mr.N.D.Gohil, learned Asst. Public Prosecutor appears on behalf of the State as well as Detaining Authority. He has tried to support the order of detention in this behalf.

9.I have considered the facts and circumstances of the case and have also considered the judgment in the case of Piyush Kantilal Mehta (supra). I have also considered the judgment and order in the case of Rajubhai Pratapbhai Panpatil vs. Commissioner of Police and others in Special Civil Application No.20420 of 2005 and another judgment in the case of Nepalsing Bodansing Shekhavat v. Police Commissioner, Vadodara in Special Civil Application No.19946 of 2005 and after going through the same, I am of the view that petition is allowed. The order of detention is quashed and set aside. The deteune, Hiteshbhai @ Pappu Rajnikant Jayswal is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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